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REPORTER'S RECORD

VOLUME 36 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 07-CR-885-B

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STATE OF TEXAS : IN THE DISTRICT COURT
VS : 138TH JUDICIAL DISTRICT
MELISSA ELIZABETH LUCIO : CAMERON COUNTY, TEXAS
----- x

JURY TRIAL - DAY 5

On the 8th day of July, 2008, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable **Arturo C. Nelson**,
Judge Presiding, held in Brownsville, Cameron County,
Texas.

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P R O C E E D I N G S

(Jury not present.)

THE COURT: Call now the case of
07-CR-885-B State of Texas versus Melissa Elizabeth Lucio.
Let the record reflect that the defendant is present along
with her counsel Mr. Cordova and Mr. Pete Gilman. And the
State is being represented by Mr. Krippel and Al Padilla.

Gentlemen, I have given you a copy of the
charge of the Court. I have not included injury to a
child. As I understand the law, the lesser offense would
be included if it is the same elements as the other
offense, but for one element not being included, which is
the lesser included offense. And in this particular case,
given the fact that there is a death, there is testimony
that there was and intent to bite, spank severely, if I
remember the exact words, and cause injury to the child,
but there was no intent to cause death. However, the
striking was done intentionally and death could reasonably
result therefrom. I am having a hard time seeing injury
to a child as a lesser included offense right now.

MR. GILMAN: I think you just said it,
Judge. I think you just said it. You gave a definition
of serious bodily injury. And because there is serious

1 bodily injury --

2 THE COURT: But, was it an intent to cause
3 it? And the result of it was a death.

4 MR. GILMAN: I think --

5 THE COURT: Had there been no death, I
6 think there would be --

7 MR. GILMAN: No, I think that serious
8 bodily injury includes the death. The serious bodily
9 injury also can be the failure to give the medical
10 attention.

11 THE COURT: But Mr. Gilman?

12 MR. CORDOVA: Your Honor, if I may? In
13 versus State, the Court firmly held that injury to a child
14 is a lesser included offense of capital murder.

15 THE COURT: Let me see that.

16 MR. CORDOVA: Secondly, Your Honor --

17 THE COURT: Let the record reflect that
18 this is the first time that I get this.

19 MR. CORDOVA: That is a fairly controlling
20 case. Most cases cite that case, Judge. It also
21 discusses negligent homicide. In addition to that, Judge,
22 yesterday, the Court stated that the video itself was not
23 a confession as to murder. That she did, in the video,
24 discuss the fact that she hit the child. And the standard
25 is, if there is any evidence at all that a jury can find

1 that she committed the lesser included, then it must go to
2 the jury.

3 THE COURT: Let me give you an example. If
4 I get a bat and I hit you over the head with it and my
5 intent is only to teach you a lesson and it results in
6 death, is it still not murder?

7 MR. CORDOVA: It may still be murder, yes,
8 sir. It may be. But the jury gets to look at all of the
9 factors there. That's what the case law says, Judge.

10 THE COURT: But isn't death the result of
11 hitting you over the head with a bat?

12 MR. CORDOVA: Yes, sir. But if it were
13 reckless, Judge, if the example that Mr. Padilla used when
14 we shot Mr. Flores with a pistol because he was twirling
15 it on a finger, isn't the result there, still death?

16 THE COURT: But the intent was not.

17 MR. CORDOVA: Isn't that the whole point?

18 THE COURT: No. There's a difference.
19 There's a difference between, intending to scare and
20 intending to strike. And when you intend to strike, as a
21 result, you cause the death, the law says it doesn't
22 matter whether you intended to cause the death or not, if
23 that is the result of striking, then that's a murder;
24 ergo, the example of the bat. I am just --

25 MR. GILMAN: I disagree with that.

1 THE COURT: Please tell me why.

2 MR. GILMAN: Well, I think serious bodily
3 injury, if you look at the definition of serious bodily
4 injury, your intent is there to cause serious bodily
5 injury, which may result in death in that part of your
6 definition. If the Court is making that ruling, the only
7 thing I am asking is the Court recognizes the fact that I
8 made a proposed charge --

9 THE COURT: The charge is stamp filed. The
10 proposed charge -- the proposed charge on what you claim
11 is the lesser included offense of injury to a child, is
12 stamp filed, and it's in the file, and you have filed it.

13 MR. GILMAN: And the Court is denying that?

14 THE COURT: That's what I'm struggling with
15 right now. And my tendency is to deny that.

16 MR. GILMAN: All right. Your Honor. Note
17 my exception.

18 THE COURT: I will rule on it.

19 MR. CORDOVA: One last case, Judge, is Luna
20 versus State. This was handed down the 26th of June, of
21 this year, about a week and a half ago -- wherever we are
22 at this point. It also holds, Judge, that -- it cites
23 Paz. In this case there was a death of a child. It
24 discusses capital murder. I have highlighted that for the
25 Court, the specific arguments that the Court had, and in

1 that case, the State wanted the lesser included offense.
2 The Defendant did not want a lesser included offense, and
3 the Court found that because injury to a child is a lesser
4 included offense, it should have been included in the
5 charge.

6 MR. PADILLA: Your Honor, a lot of these
7 cases -- may I address the Court?

8 THE COURT: I'm listening.

9 MR. PADILLA: A lot of these cases, what is
10 happening is that the State has indicted in capital
11 murder, and then included the lesser included charge on an
12 additional paragraph in the indictment alleging, you know,
13 serious bodily injury. So there are differences. Some of
14 these cases --

15 THE COURT: The Valdez case and another
16 case that I saw -- one of them had a lesser included
17 offense as a second count of the indictment. And the
18 Valdez case I think had the indictment amended to include
19 that. However, the indictment in this particular case --

20 MR. CORDOVA: Was only to capital murder,
21 Your Honor.

22 THE COURT: -- is only to capital murder.

23 MR. PADILLA: Yes, Your Honor. The State
24 is not alleging --

25 THE COURT: Hold on.

1 MR. CORDOVA: I'm sorry.

2 THE COURT: And: "Intentionally causing
3 the death of an individual, namely Mariah Alvarez, by
4 striking, shaking with the defendant's hand, foot or other
5 object, Mariah was an individual younger than six years of
6 age." So it doesn't say by striking or causing bodily
7 injury -- serious bodily injury that resulted in death.
8 It doesn't say that. And the testimony in this particular
9 case is that she struck the child, that she spanked the
10 child severely. There is circumstantial evidence of hair
11 missing from the scalp indicating that her head was used
12 and pulled in a violent way, possibly against the wall.
13 That could be a conclusion drawn from that. And the
14 defendant's own testimony or statement was that she
15 intentionally bit the child, that she intentionally
16 spanked the child severely, that she intentionally caused
17 the injuries to the ears, which is striking to the head,
18 and who knows where the head wound up.

19 MR. PADILLA: And as the Court recalls, she
20 said she caused all of the injuries to the child with the
21 exception of the scratch on the face and the foot injury,
22 which would be tantamount to the head injury of how the
23 child died.

24 THE COURT: I don't think that was
25 specifically covered in her statement in terms of the head

1 injury itself. But the circumstantial evidence could draw
2 that conclusion.

3 MR. CORDOVA: And it could draw the
4 conclusion that she just injured the child, Judge. You're
5 making the argument for including it. It's circumstantial
6 evidence, number one. Both of you are misstating what the
7 statement said. She didn't say she was responsible for
8 all the injuries minus the foot and scratches. She said
9 she was not responsible for the -- the bruises on the back
10 of the neck. There was nothing about the ear, Judge. I
11 don't know where that comes from. But there was no
12 testimony -- nothing on her statement about her injuring
13 the ears. I heard that statement six times, and there is
14 nothing about ears. There is a scratch to an ear. She
15 says -- all she says is, there's a scratch --

16 THE COURT: There are bruises to the ear.

17 MR. CORDOVA: She was never asked about
18 that.

19 THE COURT: You're right about that. As
20 far as I remember she was not asked that.

21 MR. CORDOVA: And he says: What about this
22 scratch? Or what about this? And she says: I think it's
23 a scratch. How did she get it? I don't know. I mean, I
24 don't know.

25 THE COURT: She did say, she did not know.

1 MR. CORDOVA: There were bruises to the
2 chest.

3 THE COURT: There was a conclusory
4 statement made by Ranger Escalon that talked about: Well,
5 you did all of the injuries except the one on the foot and
6 the scratch? And she said: Yes. But that was not
7 specific enough. I'll grant you that.

8 My problem is -- I go back to my example.
9 If I intend to hit you with a bat and it's only to catch
10 your attention and teach you a lesson, and it results in
11 death, is that not murder?

12 MR. CORDOVA: Can a jury not look at the
13 lesser included in that case, Judge? And the answer would
14 be, yes. Of course they could, Judge.

15 THE COURT: I don't know.

16 MR. CORDOVA: Of course you could, Judge.
17 That's his argument, to say: I intended to do it, and I
18 should have known the result being death. But that's not
19 a conclusory situation that the Court can rule upon.

20 THE COURT: You see, the appellant in this
21 particular case argued at trial that there was evidence
22 showing that the deadly blow could have been inflicted
23 recklessly rather than intentionally.

24 MR. CORDOVA: Which case is that, Your
25 Honor?

1 THE COURT: The Paz case. In this
2 particular case, there is no evidence of what the deadly
3 blow was. We do know that there were multiple contusions
4 to the head, that she had as a result of subdural
5 hematoma, and as a result of that, she died. That was
6 what the evidence was.

7 MR. CORDOVA: And we have evidence that
8 there was a fall on stairs.

9 MR. PADILLA: There is no evidence of that,
10 Judge. There is hearsay statement made by the defendant.
11 No other evidence at all in the record showing that this
12 child fell.

13 THE COURT: If you take all of the
14 statement that she gave or -- you can't choose and take it
15 apart. You can argue it --

16 MR. PADILLA: Correct.

17 THE COURT: -- but for purposes of
18 identifying whether or not there was some evidence, she
19 did state that she fell down three steps.

20 MR. PADILLA: That she had been told.

21 THE COURT: That she had been told, that's
22 correct. That she had been told.

23 MR. CORDOVA: And the last thing I'll say
24 on the issue, Judge, is that the Court is not to look at
25 the veracity of the evidence or to decide whether the

1 evidence is great evidence or not. The Court -- if there
2 is evidence that a lesser included offense could have
3 occurred, then the Court must submit it to the jury, and
4 it's an argument for Mr. Padilla to make.

5 THE COURT: (Court Reads) "Some evidence
6 must exist in the record that the defendant was engaged in
7 the lesser included offense."

8 MR. CORDOVA: I will leave it at that, Your
9 Honor.

10 MR. PADILLA: The State doesn't believe
11 that she is entitled to a lesser included offense.

12 THE COURT: Pardon me?

13 MR. PADILLA: The State obviously does not
14 believe that the lesser included offense should be
15 included.

16 THE COURT: I don't believe there is any
17 testimony to show that if she's guilty, she's only guilty
18 of the lesser offense. Had they concluded that her death
19 was caused by lack of medical attention that she knew
20 should have been given, then I think, an injury to a child
21 would have been a logical conclusion. But the intentional
22 striking, if it results in death, it results in death.
23 I'm going to deny it.

24 MR. GILMAN: Note my exception, please,
25 sir.

1 THE COURT: I'll note your exception, sir.

2 MR. GILMAN: Thank you.

3 THE COURT: Is there anything else wrong
4 with the charge of the Court?

5 MR. PADILLA: Judge? I've looked at the
6 charge, and the State has no opposition to it.

7 THE COURT: Other than that one lesser
8 included.

9 MR. GILMAN: Without waiving my proposed
10 charge of injury to a child, and my objections thereto,
11 no.

12 THE COURT: How much time do y'all need to
13 argue this case?

14 MR. PADILLA: Judge, I would ask
15 respectfully 40 minutes.

16 MR. GILMAN: That's fine.

17 THE COURT: Okay. Each side has 40
18 minutes. When the jury gets there, we will go ahead and
19 do that. It's 9:34 a.m. Now, where did Mr. Padilla go?

20 THE BAILIFF: He went to go get Maria.

21 THE COURT: Will you call Mr. Rolando
22 Gonzalez in, please.

23 THE BAILIFF: All rise for the juror.

24 (Juror enters at 10:02 a.m.)

25 THE COURT: You may be seated.

1 Mr. Gonzalez?

2 JUROR GONZALEZ: Yes, sir? (Stands)

3 THE COURT: Mr. Gonzalez? Yesterday, you
4 made known to the bailiff that you knew a Norma
5 Villanueva?

6 JUROR GONZALEZ: Yes, sir. At the time, I
7 didn't know first when you all mentioned the names --

8 THE COURT: Yes.

9 JUROR GONZALEZ: Maybe I didn't remember
10 the name, but I remembered her face. I used to work with
11 her.

12 THE COURT: You used to work with her?

13 JUROR GONZALEZ: Yes.

14 THE COURT: Where at?

15 JUROR GONZALEZ: Valley Baptist Regional.

16 THE COURT: Is there anything in that
17 relationship that would tend to make you believe her more
18 than anybody else?

19 JUROR GONZALEZ: No, sir.

20 THE COURT: You would treat her just like
21 anybody else?

22 JUROR GONZALEZ: Yes, sir.

23 THE COURT: Do you have any questions,
24 Mr. Padilla?

25 MR. PADILLA: No, Your Honor.

1 THE COURT: Mr. Gilman?

2 MR. GILMAN: No, sir.

3 THE COURT: We just needed to be sure.

4 JUROR GONZALEZ: I wanted to bring it out.

5 THE COURT: Thank you. And I appreciate
6 it. It is better to be safe than sorry. You may be
7 excused.

8 (Jury /Juror excused at 10:03 a.m.)

9 THE COURT: Go ahead and bring them back
10 in. Are you all ready for the jury? Bring the jury in.

11 MR. PADILLA: We just have to --

12 THE COURT: Mrs. De Ford, I understand you
13 are going to give back 45 minutes?

14 MRS. DE FORD: (Laughs) Sure. That'll
15 work!

16 THE COURT: Fifteen and 25. Is that fair?

17 MR. GILMAN: Yes, sir.

18 (Jury enters at 10:04 a.m..)

19 THE COURT: You all be seated. Thank you
20 very much. Cause Number 07-CR-885-B, State of Texas
21 versus Melissa Elizabeth Lucio. Let the record reflect
22 that the defendant is present along with her attorneys,
23 the Honorable Adolfo Cordova and Pete Gilman. And the
24 State is represented by Maria De Ford and Al Padilla. The
25 jury is present and all seated.

1 Ladies and gentlemen of the jury, all of
2 the evidence is before you, and the only thing that's left
3 is to receive a charge of the Court and hear the arguments
4 of the attorneys. I will read the charge of the Court to
5 you containing the law applicable in this case.

6 (Charge Read by the Court)

7 THE COURT: Is the State ready to proceed
8 with closing arguments?

9 MR. PADILLA: The State is ready. Mrs. De
10 Ford will begin.

11 MRS. DE FORD: Your Honor, if I may have a
12 few moments so that our young man can set up the equipment
13 for me? It'll take a few minutes.

14 THE COURT: Okay. You can have two
15 minutes.

16 MRS. DE FORD: Thank you, Your Honor. Good
17 morning, ladies and gentlemen. Mariah Alvarez was
18 defenseless to protect herself against this defendant.
19 She was too small. She weighed only 25 pounds.

20 MR. GILMAN: Objection, Your Honor. That's
21 not in evidence.

22 THE COURT: The weight was not in evidence.

23 MRS. DE FORD: Your Honor, the pathology
24 report has her weight.

25 THE COURT: Proceed.

1 MRS. DE FORD: She was powerless to protect
2 herself against this defendant. She couldn't defend
3 herself. She was too small. What could she do to stop
4 the beatings, to stop the biting? She couldn't do
5 anything. She was too small.

6 Ladies and gentlemen, we are asking each
7 and every one of you justice for Mariah, for the pain and
8 the suffering that she endured at the hands of the one
9 person in this room that was supposed to protect her, the
10 defendant. This is no accident. You've seen the
11 photographs, the beatings that this little girl endured.
12 This is no fall. It's not an accident.

13 They expect you to believe that she
14 inflicted over 100 injuries on this little girl, but not
15 the one that killed her. That's not what the evidence
16 said. Look at the evidence. No blood level. She killed
17 this little girl, Dr. Farley told you. She killed this
18 little girl. She beat her to death. This Defendant is a
19 cold-blooded murderer. She knew exactly what she was
20 doing each and every time she struck the little girl. It
21 wasn't an accident. She intended to kill her. And that's
22 what she did.

23 After that fatal blow, after she struck
24 Mariah, after she caused that head injury, she didn't help
25 this little girl. She let her lie on that bed as her

1 brain started to swell, as she struggled to breathe. She
2 didn't help her. And she started seizure without food and
3 water. She left her there to die like a wounded animal.
4 When her heart finally gave out, when she went into
5 cardiac arrest, she didn't help her.

6 She doesn't deserve your sympathy. She
7 doesn't deserve your loyalty. After that little girl went
8 into cardiac arrest, the paramedic told you when they got
9 there, this little girl lay on the entrance of that
10 apartment on the floor by herself. No one there to hold
11 her, no one there to comfort her. After she killed her,
12 she discarded her like a broken doll. Why did she whip
13 her? It didn't even faze her. She was frustrated. She
14 had too many kids. It's no excuse for what she did to
15 this little girl. It's not acceptable.

16 The Judge has given the jury charge. This
17 is the law that you will apply in this case. I wanted to
18 talk to you about a couple of things in here. These acts
19 of the defendant were intentionally and knowingly. This
20 is no accident. One hundred or more injuries on this
21 girl. She knew what she was doing. Dr. Farley told you
22 this little girl had bruising all across her scalp. The
23 worst case she's ever seen. She told you she died from a
24 beating.

25 This little girl was beaten to death by

1 this defendant. It was no accident. She told you in her
2 confession she was responsible, no one else. Only when
3 she finally came clean with the Ranger. She never told
4 him this was an accident. She never told him anything
5 about the stairs because she knew what she had done. She
6 told you what she had done.

7 We also had to prove in this case that the
8 defendant killed Mariah by striking her, by beating her,
9 by throwing her, by shaking her. Dr. Farley told you she
10 was beaten to death. That's exactly what she did. Even
11 their own expert tells you there was hemorrhages in her
12 eyes. That is the result of being shaken, and beaten.
13 She had those injuries on both sides of her ears. What
14 does that tell you? She was hit on the head. That's what
15 caused the fatal injury. And she did it.

16 The Judge also instructed you to consider
17 all of the facts and circumstances surrounding Mariah's
18 killing, and I ask you to do that because that little girl
19 was defenseless. There was no one there to protect her.
20 She did it supposedly out of frustration. The biting,
21 that she bit that little girl so hard on, and you see
22 those pictures, that this little girl bled from those
23 bites.

24 She pinched her little vagina. What kind
25 of mother does that? What does that tell you about who

1 she is? She's doing this to her baby girl, to her
2 daughter. Not acceptable in our community, ladies and
3 gentlemen. Consider everything about the facts of this
4 case of how Mariah died.

5 The State has the burden in every case to
6 prove the case beyond a reasonable doubt. And it's a
7 burden that we accept freely because we do not want people
8 in this community to have to prove their innocence. It is
9 our responsibility to prove them guilty. And in this
10 case, we have proven that to you beyond all doubt, and
11 beyond every doubt. I don't want -- there is no
12 reasonable doubt that this defendant killed that little
13 girl. It doesn't require that we have to prove it beyond
14 all doubt or beyond every doubt, but only beyond a doubt
15 based on your common sense and reason. We have done that,
16 ladies and gentlemen. Her confession.

17 (Videotape confession played.)

18 THE RANGER: "Was it intentional?

19 THE DEFENDANT: No, it wasn't. It was an
20 accident.

21 THE RANGER: Show me exactly how you did
22 it.

23 THE WITNESS: I was -- she was acting up in
24 her -- (inaudible)

25 THE RANGER: That's a pretty good bite.

1 Make you mad?

2 THE WITNESS: No.

3 THE RANGER: Why did you do it?

4 THE WITNESS: I just did it. "

5 (End of Excerpt played)

6 MRS. DE FORD: Ladies and gentlemen, on her
7 confession she also tells us that she beat that little
8 girl when she was sitting, when she was standing, when she
9 was laying in her bed, in the bathtub. That explains all
10 these bruises. She is the one that did it and no one
11 else. Dr. Vargas, the emergency room doctor for over 30
12 years tells you, this is the worst case he has ever seen.
13 He tells you -- his testimony tells you this isn't a fall.
14 That bruising is not consistent with falling. That little
15 girl didn't have any external injuries on her head because
16 it wasn't a fall.

17 Dr. Farley told you it's not a fall. It's
18 impossible. This little girl had too many contusions on
19 her scalp that caused her brain to swell. It doesn't just
20 happen one time. She was bleeding to death. That's what
21 she told you.

22 Even their own expert tells you that
23 bleeding in the eyes, that hemorrhaging is the result of
24 being struck. He agrees with that, he tells you. He
25 doesn't disagree with anything. The autopsy report agrees

1 with Dr. Farley. He even tells you it's possible she died
2 from being thrown.

3 Detective Villarreal told you that on the
4 way -- after she had already been arrested, charged with
5 capital murder, she gets on the phone, calls someone and
6 tells that person: I did it. I'm responsible. You have
7 all of the evidence that you need to convict Mariah's
8 killer.

9 Ladies and gentlemen, this defendant
10 intentionally and knowingly killed that little girl. This
11 is your community. I ask you to care about Mariah. I ask
12 you to care about her life. But more importantly, I ask
13 you to care about her death and the manner in which she
14 died. I ask that you tell this defendant that the killing
15 of children in our community is not going to be tolerated.
16 I ask you to tell her that, even though she has silenced
17 this little girl by killing her.

18 You see her eyes call for justice. We ask
19 that you give Mariah justice. We ask that you find her
20 guilty of killing her baby girl, and guilty of capital
21 murder. Thank you for your time and your services.

22 THE COURT: Mr. Gilman?

23 MR. GILMAN: Judge, can they remove some of
24 this technology?

25 THE COURT: I am not going to hold it

1 against your time. You want a five-minute warning,
2 Mr. Gilman?

3 MR. GILMAN: No, sir. About one minute.

4 Good morning, folks. This portion of the
5 trial is opening statements, and not evidence. You hear
6 and you have heard all of the evidence that the Court has
7 allowed from the witness stand. If I misstate anything, I
8 will apologize right now. Go by what your memory is in
9 this trial.

10 This has been a very difficult case, a very
11 difficult case because of the emotions that -- that we all
12 have. But I want to start by talking to you a little bit
13 about the voir dire. Remember when we brought each one of
14 you in here and you were up there on the witness stand and
15 we were asking you questions? And one of the things that
16 I asked you was: Are you strong enough to say to the
17 State, no? And each one of you assured me that you were
18 strong enough to say "no" to the State.

19 We also talked about what does
20 intentionally and knowingly mean to you? And each one of
21 you talked about what intentionally and knowingly means.
22 That you have every intention of doing that which is what
23 came about. And the Court gives you the definition in his
24 charge.

25 What we went through at the beginning, we

1 went through 125 people to get to you people. That was
2 not for nothing. That was very important. Because it
3 gave us an opportunity to talk to each one of you, to let
4 you know about some of the problems that are going to be
5 coming up. We ask those questions for a reason.

6 Now, in the opening remarks that we made in
7 the beginning of the trial after you were all seated here,
8 I told you my client is not up for "Mother Of The Year."
9 I told you that my client is guilty of injury to a child.
10 She is and she has admitted that. The question here
11 before you is whether or not on February 17, 2007, Melissa
12 Lucio intentionally or knowingly killed Mariah Alvarez.
13 That's the issue. That's the issue. Not whether she beat
14 her. Not whether she broke her arm. Not whether she's a
15 lousy mother or didn't provide for her children. That's
16 not an issue. The issue is whether or not she killed
17 Mariah on the 17th of February, 2007.

18 Let's take a look at this now. The State
19 says in their indictment that she intentionally and
20 knowingly -- or knowingly, caused the death of Mariah by
21 striking her, shaking her, throwing her with her hand,
22 foot, or object unknown to the Grand Jury. That's what
23 the State has to prove to you beyond a reasonable doubt.
24 Not whether or not this little girl was bruised from head
25 to foot. We admit that. We admit that. What we do not

1 admit is that she killed her on the 17th of February,
2 2007.

3 This whole case revolves around this video.
4 This video is real important. If you have -- if you
5 cannot remember it all, play it again. It's a long, long
6 video. And I'm sorry for that. But this is the key to
7 everything in this case.

8 When Melissa Lucio was taken into the
9 police station, this video started at 10:00 o'clock at
10 night -- 9:53 I believe it says on the video -- 9:53 at
11 night. What time was that woman awake in the morning?
12 Don't you know with that many kids around she was probably
13 up around 6:00 o'clock. And this is 9:53. This is a
14 woman that has nine kids around her and a husband, all day
15 long. This is a Saturday. At 9:53, most people are
16 getting pretty tired if they have been up around
17 6:00 o'clock in the morning. They are probably exhausted.

18 This is just the beginning of what's taking
19 place. You are down at the police station. Folks, when
20 you go down to the police station, you're not going to
21 leave. The police are there for one purpose. They're not
22 your friends. They're not going to help you. That's
23 something that we tell our kids when they're growing up.
24 They have got no intention of letting you walk out of
25 there. Their intentions was to get something out of

1 Melissa Lucio. And that's quite evident by Banda. Please
2 Officer Banda was yelling and screaming at my client while
3 she's there. She's there for over four hours before
4 Investigator Escalon -- the Texas Ranger, come in over two
5 hours. Now we're past midnight, and she was up around
6 6:00 o'clock in the morning.

7 How do you react when you're tired? Yeah,
8 just whatever you say. Yeah, whatever you're saying. I'm
9 ready. Whatever. Let me go home and go to sleep. Let me
10 go home and take care of my kids. You can hear in the
11 background of that video, the children making noise.

12 My client is there at the police station
13 without an attorney. She doesn't have anybody telling
14 her: Hey? This is what you should do. I'm suggesting
15 you do that. Nobody is advising her. They're taking her
16 rights, and just stomping all over them. And then they
17 are trying to say, and they're trying to suggest: Well,
18 we read her rights. So therefore, everything that we did
19 is, a-okay. Baloney! It's not a-okay.

20 If you are intimidated, if you are yelled
21 at by a cop who gets right in your face -- yelled by a
22 police officer, you're going to be pretty well
23 intimidated.

24 How is it when you are stopped on the road
25 for some traffic violation, aren't we all nervous? And

1 this is in a cramped quarters in a police station, and
2 she's being yelled at.

3 Folks, the State wants you to believe that
4 that's a confession. Does the State know at the time of
5 the video, the caused of death of Mariah? No. They don't
6 know the cause of death of Mariah until the next day when
7 they go do the autopsy. They learn after the autopsy that
8 Mariah died from brain hemorrhage. Blunt force trauma to
9 the head. That's when they first know about it.

10 She confessed to what? She confessed to
11 bruising that child from head to foot. She confessed to
12 neglect. She didn't confess to murder.

13 So where did the murder take place on the
14 17th of February, 2007? We've got all of the people in
15 the house. We have nine kids in a two-bedroom house. We
16 have mom and dad. And who did the police investigate?
17 Who did the police talk to? Well, we've heard that they
18 talked with Melissa Lucio because we have the video. We
19 assumed that they're talking to Robert in another room.
20 And then we learn that they talked with some of the kids.
21 Child Protective Services came and took some of the kids
22 to Maggie's House and asked them different questions.
23 Now, folks, we didn't get that information. And I'm here
24 to tell you that we asked for it --

25 MR. PADILLA: Judge, I'm going to object to

1 Mr. Gilman going outside of the record during closing
2 arguments. That's what he's doing.

3 THE COURT: Stay within the record.

4 Ladies and gentlemen of the jury, you
5 remember the testimony as you remember it and the
6 witnesses as you remember them.

7 MR. GILMAN: Don't you know, folks --

8 THE COURT: Officer Gomez? Check with the
9 media, please.

10 MR. GILMAN: Don't you know, that if those
11 kids had anything to say that would help the State's case,
12 their statements would be brought before you.

13 Folks, look' at what the police did in that
14 video. They took fingernail clippings. They took saliva
15 from their mouth. They took hair. What was ever done
16 with that? Officer Cruz said: Oh, we never got it back
17 from the lab. Baloney! They never sent the stuff off
18 because they say: Ya! We got a confession. They didn't
19 get a confession. Nowhere in that statement does it say
20 that I killed my daughter on the 17th of February, 2007.

21 That's what you are here for to determine
22 whether or not she did that. And what do you have? What
23 does the State rely upon? Pictures like this showing the
24 black and blue. You're supposed to get real emotional and
25 say: Well, that poor darling kid. That poor child! Must

1 have been killed by her mother. She must have been killed
2 by her mother.

3 When did the bruises take place? When did
4 the bite mark take place? When did the broken arm take
5 place? Every one of those doctors said that they were --
6 every one of those bruises were different colors. So they
7 were taken at different stages of healing. The broken
8 arm? Different stages of healing. The bite marks?
9 Different stages of healing. Did they occur on the 17th
10 of February, 2007? No. Because you're not going to get
11 black and blue marks on the same day, are you? Those
12 occurred before.

13 They're showing you these pictures so you
14 can get all emotional and upset with my client. And,
15 fine, you can get upset with my client for being a
16 neglectful mother, for being someone who has injured a
17 child. But, did she kill it? We have three doctors that
18 said: This child died from blunt force head trauma, a
19 brain hemorrhage. That's what killed this child.

20 The State is here to tell you and to prove
21 to you beyond a reasonable doubt that this all took place
22 on the 17th of February, 2007. When was this child on the
23 17th of February, 2007 beaten, thrown, kicked, hit on the
24 17th of February, 2007? And that's what the Judge tells
25 you in the charge, that this thing took place on the 17th

1 of February, 2007.

2 Each one of these doctors all testified --
3 all of them say that falling down the stairs is an example
4 of blunt force head trauma that could cause the death of
5 an individual. It's a different conclusion that they
6 make, which is the difference.

7 Dr. Vargas didn't make -- didn't draw a
8 conclusion. He was pretty ground neutral. Dr. Farley
9 certainly made a conclusion. She reacted the same way the
10 State wants you to react. You see these bruises, and
11 you're supposed to get all upset and say: Well, must have
12 been beaten to death.

13 But what about something else? Who is it
14 that tells us that this child fell down the stairs?
15 Melissa Lucio. Isn't it funny that Melissa Lucio also
16 tells the police in the video statement the symptoms that
17 this child has. The vomiting. The child is lethargic
18 with rigidity as the child gets closer and closer to
19 death. Isn't it funny? This is a person who's not
20 trained in medicine, and she's saying this to the police.
21 They're not listening.

22 This child died from the brain hemorrhage.
23 What caused the brain hemorrhage? We have three doctors
24 that all agree that it could be from hitting. It could be
25 from hitting against the wall, hitting with your fist, but

1 there also could be from falling downstairs. Now, what is
2 it?

3 The State has the burden of proving to you
4 beyond a reasonable doubt that my client killed this
5 child. Where and what evidence is available to prove that
6 beyond a reasonable doubt?

7 I asked Detective Cruz when she was here --
8 she's the case agent. She brings everything together and
9 dumps it off at the district attorney's office and says:
10 Here's our case. Officer Cruz, what evidence do you have
11 that Melissa Lucio caused this brain hemorrhage and killed
12 her? None. She says: None. She doesn't have any
13 evidence. If she doesn't have any evidence, well, where
14 is the evidence?

15 Is it Dr. Farley who has decided that
16 that's the way it is because of the emotion? Or, did she
17 really do some background checking? Did she do some
18 checking at all? No.

19 We asked these police officers: Did you go
20 to the scene? And then Mr. Padilla -- Mr. Padilla is an
21 experienced police officer, and he asked Officer Cruz:
22 Did you go to the stairs? Come on. That's a stupid
23 question.

24 MR. PADILLA: For the record, Your Honor,
25 I've never been a police officer, Your Honor, so --

1 MR. GILMAN: Objection, Judge, to his
2 sidebar.

3 THE COURT: You said: Mr. Padilla.

4 MR. PADILLA: He referred me as police
5 officer.

6 MR. GILMAN: Mr. Padilla, who is an
7 attorney, who knows better than to ask a stupid question
8 like that. Mr. Padilla asked Dr. Kuri: Did you go to the
9 stairs? No. We've got police officers that are in
10 Harlingen that are supposedly trained for that. They
11 didn't even go to the right stairs.

12 When I asked the Texas Ranger: Did you go
13 to the apartment? Yeah, I went to the apartment. I went
14 to where the address was. Well, the address is at an
15 apartment complex and there's a lot of apartments in
16 there. Which one did you go to? Oh, I don't know. I
17 went to the one that's right there. We don't even know if
18 he went to the right apartment. They had search warrants
19 to go there.

20 Folks, they brought in a picture of baking
21 soda. I bet if we go into every one of your homes, and
22 you probably are going to have baking soda in your house.
23 Is there something wrong with having baking soda in our
24 houses now? We have to stop and tell her: We don't want
25 you to no longer sell baking soda because it's drug

1 paraphernalia. Come on!

2 They want you to think that because there's
3 is a can in the house -- a Coke can -- that that's drug
4 paraphernalia. Well, folks, did they test it? Did they
5 test it to see if there were any signs of drugs in it?
6 No. Again, it was to get you all emotional about these
7 things.

8 But let's look at the hard cold facts.
9 This child died of a brain hemorrhage. What caused that
10 brain hemorrhage? Do we know what caused that brain
11 hemorrhage and who caused that brain hemorrhage? No.
12 Melissa Lucio never says she hit her in the head. Never
13 hit Mariah in the head. So who hit Mariah in the head?

14 What about the people that were there?
15 Were any of them called? No. The police officers had
16 these search warrants and they go over to the house, and
17 they go through the car and they are looking for things.
18 They don't know what they're looking for, but they're
19 looking.

20 There is evidence supposedly that there is
21 apparently hair loss of this child. You can have hair
22 loss because you don't have good nutrition. You can have
23 hair loss because you're not eating properly. Or, you're
24 not sleeping properly. You're not getting proper
25 medicine. You're talking about some people that are very

1 poor. Can you imagine sitting down at a meal in their
2 house? Just lunch, you're going to use up an entire loaf
3 of bread and not everybody is going to get fed!

4 They took a lot of evidence, folks. But
5 they didn't do anything with it. They said: I've got
6 this confession. Confession to the neglect? Yes.
7 Confession to injury to a child? Yes. No question about
8 it. But is it murder?

9 We hear Banda on the video. Officer Banda.
10 He didn't come in and testify, but we hear him on the
11 video. There is no doubt in his mind that it's neglect.
12 Neglect of medical attention. The officers know what this
13 case should be. It's neglect. It's a neglectful case.
14 It's an injury to a child that resulted in the death. But
15 is there a murder?

16 Then we have CPS, Child Protective
17 Services. Child Protective Services takes away the
18 children right at the time that Mariah is born and brings
19 them back two years and two months later. Brings them
20 back. Gives them to Melissa Lucio and her husband in
21 November of 2006. And Child Protective Services doesn't
22 bring part of this case back. It brings all of the
23 children back and says: Here. Here's your family.
24 Within a short period of time this family can't even stay
25 in the same apartment that they're in and have to move.

1 So they move. In a short period of time Mariah is dead.

2 Did the system fail them? Yeah, you bet.

3 Should those kids have ever been brought back to my
4 client? Probably not. She tested positive after the
5 birth of Mariah soon afterwards. She tested positive
6 after the birth of the other children. For child
7 Protective Services, this should have sent up red flags
8 right away. Child Protective Services should never have
9 brought those children back, but they did.

10 Now the question is: On February 17, what
11 happened? On February 17, did my client kill Mariah?
12 There is no evidence of that. There is no evidence that
13 she struck Mariah. There is no evidence that she kicked
14 Mariah on the 17th of February. There is no evidence that
15 she threw Mariah against the wall on the 17th. And there
16 is no evidence that she hit Mariah with an object unknown
17 to the Grand Jury. There has got to be some sort of
18 evidence.

19 For that I ask you to find my client not
20 guilty because she didn't kill this child on the 17th of
21 February, 2007. She certainly was neglectful and she
22 certainly injured that child, but that's not what this
23 charge is. This charge is for murder.

24 There is testimony or evidence of the
25 defendant striking and hitting. But I want to go back to

1 the video because the video says a lot. The video is very
2 important. Study that video because that's where the all
3 of the key is. Melissa Lucio said things. She didn't
4 have an attorney. Nobody is there to coach her and tell
5 her what to say or how to say it. She's there on her own.
6 She has got Salinas, Cruz, Banda, Villarreal, and Escalon.
7 Five law enforcement officers throwing questions at her.
8 She's there on her own. Nobody is helping her.

9 And she has told everything she knows and
10 nobody is listening. She is telling us much: I beat this
11 child. I neglected this child. I hurt my child, but I
12 didn't kill her. I didn't hit her in the head. So how
13 did she get the brain hemorrhage? Fell down the stairs.
14 She fell down the stairs. Melissa Lucio says she fell
15 down the stairs. What evidence does the State have to
16 prove to you that this is not possible, that it didn't
17 happen? They don't have anything.

18 One of the other things that I think is
19 real important here is the police officers, when they're
20 making this video, says: Melissa? Would you take a
21 polygraph test? Would you take a polygraph test? Yeah,
22 I'll take it. Bring it on. Where's the polygraph test?

23 MR. PADILLA: Your Honor, I object to that
24 first, as to the issue of the polygraph, Your Honor,
25 because counsel knows it is inadmissible. And secondly,

1 we are going outside of the record.

2 MR. GILMAN: No, we're not, Judge. It was
3 there, and they left it in.

4 THE COURT: The argument as to whether it
5 is admissible, is sustained. So please move on.

6 MR. GILMAN: Well, we didn't get a
7 polygraph because there isn't any. We didn't get it. It
8 is just like taking the saliva from the mouth. It's just
9 like taking the fingernail clippings. We don't get any.
10 It's just like taking the so-called drug test that they
11 had at the police station. Well, where is it? We never
12 got it. It is like getting the video statements of the
13 kids that were there at the house as to what they saw and
14 observed, we don't got it. We don't have it. Because
15 there's nothing in there that helps the State prove their
16 case.

17 MR. PADILLA: Your Honor, again, he is
18 going outside the record. I would object to that.

19 THE COURT: Mr. Gilman, stay within the
20 record.

21 MR. GILMAN: I'm in the record, Judge.

22 Folks, you are the judges of all of the
23 witnesses that have come in and testified. But I ask you
24 to look through that statement, that video statement. And
25 where in there does it say that my client killed this

1 child? What evidence does the State have, other than
2 conclusions without -- we've got to connect all of the
3 dots, folks. We can't go from A to Z. We've got to get
4 through every one of the dots to get to the murder.

5 Where is the murder? The murder supposedly
6 took place on the 17th of February, 2006. Where? When?
7 Who did it? The State wants you to believe that my client
8 did it, Melissa Lucio. When did she do it? There's no
9 evidence to that effect. There's nothing that has been
10 brought before us except the pictures of the bruising.

11 This is a test for you, folks. Do you want
12 to be like the State wants you to be, and be emotional and
13 say: Yes, if you did that, you must've done the other.
14 It's not a "must've". It's not "a probably". It's proof
15 beyond a reasonable doubt. They've got to prove to you
16 that I did something wrong in this country. Not that you
17 "maybe" did something wrong. But that I did something
18 wrong. That's what our whole criminal justice department
19 is for. Not that I maybe did it, or probably did it, but
20 that I did do it beyond a reasonable doubt. Beyond a
21 reasonable doubt. And there's a reasonable doubt, and
22 that is the possibility of falling down the stairs.

23 Did this brain hemorrhage come about by
24 Mariah maybe falling down stairs? According to the
25 doctors, it's just as consistent of falling down the

1 stairs as it is of beating or hitting the child. But
2 there is no evidence on the 17th of February, 2007, of any
3 beating, kicking, throwing or hitting.

4 Ladies and gentlemen, go back to that
5 video. That video is the key. And then read the charge.
6 Read the first paragraph of that charge. Where is there
7 any evidence of any wrongdoing on the 17th of February,
8 2007? Because that's what the Judge tells you the State
9 has to prove beyond a reasonable doubt. And they haven't
10 done it.

11 And I ask you: Are you strong enough?
12 This is a test. Are you strong enough to say: No? My
13 client admits that she misused and abused this child.
14 She's guilty of injury to a child. But she's not guilty
15 of murder. Thank you.

16 THE COURT: Mr. Padilla?

17 MR. PADILLA: Would the Court give me a
18 two-minute warning.

19 THE COURT: Yes, sir.

20 MR. PADILLA: How much time do I have?

21 THE COURT: You have 25.

22 MR. PADILLA: Thank you. May it please the
23 Court, Mrs. De Ford?

24 THE COURT: Actually you have 27 minutes.
25 He finished two minutes early.

1 MR. PADILLA: -- Mr. Cordova? Mr. Gilman?

2 Ladies and gentlemen, again, first and
3 foremost thank you for your service here. As we talked to
4 you when we were in the process of selecting you, we told
5 you it was going to be a tough case for you to look at.
6 We thank you for the attention that you have given us
7 here. We believe that the evidence clearly indicates that
8 the defendant caused the death of this child.

9 The defense would have you -- well, I was a
10 defense attorney for 30 years. Rabbit trails. We try to
11 prove to you what the State didn't do. We try to prove:
12 Well, the State should have done this, and the State
13 should have done that. Well, we're not in a perfect
14 world. If everybody had their resources available to do
15 what they had to do, if all of the officers were there and
16 available to conduct this investigation, it would be a
17 perfect world. But we're not in a perfect world. The
18 State brings to you the evidence. The State has proven to
19 you guilt beyond a reasonable doubt, and the evidence is
20 there.

21 Ladies and gentlemen the defense states
22 this child died from a fall. Look at the tape.
23 Mrs. Lucio was not there when this child allegedly fell.
24 She said "somebody told her" that the child had fallen.
25 What if anything, did she do to aid the child at that

1 time? Nothing. Absolutely nothing.

2 And you have the video to take back with
3 you to the jury room. Look at her demeanor. Look at what
4 she says.

5 Mr. Gilman wants you believe: You know
6 what? Her rights were trampled on. Dear Lord! What? If
7 she had a lawyer, maybe she wouldn't have made the
8 statement? You know, the problem is that she did make the
9 statement and the statement that she made was the true and
10 correct statement at the end. She admitted it. She
11 admitted that she caused all of the injuries to that
12 child, ladies and gentlemen.

13 What injuries did that child have, if not a
14 brain injury? Well, they tried to differentiate between:
15 Well, you know what? I may have caused 110 bruises. I
16 may have caused two or three bites on the body. I may
17 have twisted the arm and broken it. But you know what? I
18 never hit her on the head. Is that reasonable? Is that
19 reasonable? That child was slapped, according to
20 Dr. Farley, that child was hit across the head and that's
21 what caused the brain damage. It wasn't a fall from the
22 stairs. It wasn't. Because the evidence was inconsistent
23 because of the abuse that this child had taken.

24 Ladies and gentlemen, I introduced to you
25 about 30 pictures. I had about 300 there. I'm not here

1 to gain your emotion. I'm not going to flash pictures in
2 front of you so you can say: Well, we need to convict
3 this person because, you know what? The child suffered.

4 The child suffered. There is no doubt that
5 this child suffered. The 88 days that this child was with
6 her mother, I can assure you that this child suffered
7 physical, emotional, verbal and psychological abuse.
8 Because that's what the evidence shows. That's what the
9 evidence shows.

10 CPS didn't do it. CPS didn't lay a hand on
11 this child. Who are you going to blame CPS, for this
12 child's death? No. The person responsible is that person
13 who is sitting right there at the end, for what she did
14 it. Yes, CPS probably shouldn't have given the child
15 back. But you know what? I can almost guarantee you,
16 ladies and gentlemen, if she had picked up the phone and
17 said: You know what? I don't want this child. I'm tired
18 of this child. I don't want her, I don't like her, I
19 don't need her, and I want her out of my life, CPS
20 probably would have picked up that child.

21 Why kill her? And why only this one? Why
22 only this one? We'll never know. But the bottom line is
23 she committed the acts which led to the cause of her
24 death. This child had bruised kidneys, a bruised spinal
25 cord and bruised lungs. How do you do that? I mean, what

1 force does it take somebody to cause such devastating
2 injuries to a child and then say: You know what? I never
3 touched her across the head. That's just totally --
4 totally unbelievable.

5 Because Dr. Farley testified that the child
6 had two small lacerations above the top of the head. And
7 it is all consistent with the child of being hit across
8 the head. You heard the medical testimony.

9 Dr. Vargas testified that he has been a
10 doctor for 30 years in the emergency room. He sees a lot
11 of fallen children. And he's also a lot of child abuse.
12 In his 30 years, this is the worst case of child abuse he
13 has ever seen. If somebody is being injured to a point
14 where somebody classifies that as the most severe child
15 abuse case they've ever seen, don't you think this child
16 would have been hit across the head? You don't think this
17 child got rattled? You don't think that this child
18 suffered injuries at her hands? Is it reasonable?

19 You can draw inferences from the evidence,
20 ladies and gentlemen. And the inference is clear that she
21 caused those injuries because it's consistent. It's
22 consistent with her behavior. It's consistent with her
23 pattern of conduct towards this child. If this child had
24 just come in with a head injury and nothing else, you
25 might have said: You know what? It may have been a fall.

1 Or, you know what? One needs to blame one of the other
2 children. Or: Let's blame somebody else.

3 The bottom line is when you look at the
4 video, she confesses to causing all of the injuries. And
5 the defense would ask: Well, how come they didn't ask
6 about the head injuries? That's very important. Because
7 there was no visible evidence of a head injuries. The
8 pictures that were taken, were pictures of the body. He
9 doesn't even ask Dr. Kuri: Wouldn't he expect to see
10 swelling of the head if somebody had fallen down the
11 stairs? Would you see something visible on the outside?

12 And the officers were of the same
13 impression. They had these photos. They showed them to
14 her when they were questioning her about the video. But
15 they didn't have anything at that point to indicate that
16 it was there was a head injury. But there was a head
17 injury. Okay?

18 And now they tell you also that the head
19 injury happened -- the alleged fall -- an heavy emphasis
20 on the alleged -- that the alleged fall happened on
21 Thursday morning -- some time on Thursday morning. The
22 evidence clearly shows, ladies and gentlemen, that the
23 injury happened on Friday, because that's what Dr. Farley
24 testified to. That the evidence of the injury was totally
25 inconsistent with somebody having had suffered an injury

1 more than 24 hours before. So what we're talking about
2 here is a head injury that occurred on that Friday, and
3 not on the Thursday.

4 But I even asked Dr. Kuri: Well, could the
5 child have been able to eat, if she had suffered the
6 injuries on Thursday, could the child be able to eat
7 Friday morning? He said: No, because they had lost the
8 ability to talk, move, and/or perform any motor function
9 because of the brain injury. So, ladies and gentlemen,
10 this incident happened on Friday. Anything that tells you
11 it happened Thursday, is baloney. Okay?

12 Because it fits a pattern, where you say:
13 You know what? Why don't we just blame it on a fall on
14 the step that Mrs. Lucio never saw? That's not what the
15 evidence shows. The evidence indicates that the injuries
16 happened on Thursday. And what did she testify to? That
17 the child remained with her from 11:00 in the morning
18 until 3:00, and she was by herself, when the other two
19 younger children went to school.

20 I know that this child suffered this brain
21 injury Friday during the day. It couldn't have been
22 Thursday. The child wouldn't have been able to eat on
23 Friday, and would not have been attentive on Friday, as
24 the doctor testified.

25 They said: We can prove the evidence to

1 you about the fall. Ladies and gentlemen, Dr. Vargas
2 testified that he didn't see anything outside of the
3 cranial area that would be indicative of a fall. And he
4 has seen many falls in the emergency room.

5 Dr. Farley that she found nothing outside
6 of the skull that would be indicative of receiving a fall.
7 Furthermore, she saw no abrasions on the knees, no
8 abrasions on the elbows, no abrasions on the face that
9 would be consistent with the fall.

10 And then Dr. Kuri comes in and testifies --
11 he never testified that he saw anything either in the
12 autopsy report or when he sat there and listened to the
13 evidence -- that would indicate that this child fell. If
14 there is no evidence that the child fell, then what is he
15 doing here arguing: Well, the fall caused the injuries.
16 There's no fall. There is no medical evidence at all,
17 consistent with the fall. No evidence whatsoever.

18 They want you to believe: Well, you know
19 what? This person is not guilty of this murder, because
20 you can't prove that there wasn't a fall. Rebecca Cruz
21 went out there and looked at the place where this child
22 "allegedly" fell. Again, heavy evidence on the word
23 "allegedly." She could find no blood, no brain -- no hair
24 matter, and nothing that would be consistent with evidence
25 that the child had fallen from those stairs. If there's

1 no evidence, then the only other reasonable circumstantial
2 evidence that we have here is, you're going to find this
3 person guilty of the offense of murder because she caused
4 the injuries, ladies and gentlemen. She caused the brain
5 hemorrhage. There is nothing else that's reasonable. If
6 you look at the evidence, nothing else is reasonable.

7 And you might say: Well, you know what?
8 Maybe. Maybe what? A child who suffers this type of
9 injuries, and suffers the damage throughout her body, does
10 it make any reasonable to say: Well, you know what? She
11 didn't cause the brain hemorrhage. She confessed. She
12 admitted that she caused the brain injuries.

13 We have evidence of the sister coming in
14 and saying: You know what? She said: Well, I am being
15 arrested because I spanked my child. Does that seem
16 reasonable, ladies and gentlemen? I, respectfully, say:
17 You know what? She never mentioned it.

18 The officer had no reason to lie. Officer
19 Villarreal that took her statement, had no reason to lie.
20 He said that he heard her say: I don't know why they
21 arrested Robert. I'm the one who did it. Did what?
22 Caused the death of the child. The child was already
23 dead. She had already been arrested. She already made a
24 statement, and she had already been arraigned, and she was
25 now out on bond -- on a two million-dollar bond.

1 Why did she say she did it, if she didn't
2 do it? Why not qualify it and say: Oh, yeah. Well, the
3 only thing that I did -- you know what -- I bit her, I
4 broke her arm, and I caused internal injuries. But you
5 know what? I never hit her across the head. No. She
6 admitted it on the statement, and she also admitted it in
7 front of the officers when she called the sister.

8 So you have to look at those things, ladies
9 and gentlemen. It's not in a vacuum. It's not in a
10 vacuum. But you don't get these type of injuries -- I'm
11 not saying you should convict her because she's a
12 neglectful mom because of her children, or whatever. She
13 has been charged. She's been indicted, and the evidence
14 clearly proves guilt beyond a reasonable doubt because of
15 the injuries that she caused to his child.

16 Look at the videotape. You know what?
17 Remember when the camera pulls away and they're going to
18 take her fingernail clippings, as well as her saliva and a
19 sample of her hair? Ladies and gentlemen, because with a
20 DNA test, it would have proved that she had contact with
21 her daughter. That, again, was another matter that you
22 should look closely as to what the video statement shows.
23 But to prove this, look at it clearly. They tell her:
24 We're going to take some fingernail clippings from you.
25 And what does she do? She starts cleaning her nails.

1 Look at that. If she had nothing to do with causing the
2 death of a child, why is she sitting there cleaning her
3 fingernails before these clippings are picked up? Because
4 she still was conscious enough to say: You know what? If
5 there is evidence there that shows my injuries to the
6 child, consistent with hitting her, consistent with
7 striking her, well -- guess what -- I'm going to sit there
8 and just clean my nails. Why? If all you did was
9 physically beat the child, but didn't cause the death,
10 what do you have to hide?

11 The defense would have you think: Well,
12 you know what? Poor Mrs. Lucio. She didn't have a
13 lawyer. Well, she never asked for a lawyer. And you're
14 going to look at Exhibit No. 1, which is the Miranda
15 warnings and on there it tells you, clearly, that you can
16 have a lawyer present if you want. She waived that. You
17 can stop the interview, if you want. She didn't stop it.
18 And I asked Officer Cruz: Did you prevent her? No. Did
19 you keep her from having food, or water? No. No. Why?
20 It's a voluntary statement, ladies and gentlemen.

21 Well, yeah, the officers were getting upset
22 with her. And probably if all of you all would have been
23 there, you probably would have been upset. But the bottom
24 line is: She confessed. She made a statement after
25 knowing what her constitutional rights were, and it was

1 freely and voluntarily given. She told you in her own
2 words she caused the injuries to this child.

3 Ladies and gentlemen, you see the video?
4 You see the striking, striking, striking of the child. I
5 mean, that's sufficient to bruise the spinal cord. I
6 mean, that wasn't a love tap. Those bite marks weren't
7 kisses. They're not kisses. Surely, they're not! This
8 kind of a child was never kissed in her life, and probably
9 was never hugged by her during this time in her life. She
10 was beat up. She was abused. You know? And all it would
11 have required was one phone to take this child away,
12 ladies and gentlemen.

13 You know, we have to send a message to the
14 public. We live in a disposable society now. You think
15 it's okay to throw away paper dinner plates, plastic cups,
16 and everything else? But we don't live in a society with
17 disposable children. And that's what I think happened
18 here. And that's what I know, because that's what the
19 evidence shows. This was a disposable child for her.
20 Somebody who was not cared by Mrs. Lucio, not loved by
21 Mrs. Lucio. So, you know what? I'm going to make her
22 suffer. I'm going to bite her. I'm going to hit her.
23 I'm going to make her last 88 days on this Earth a
24 miserable ending. And you know what? The fact is, the
25 only person that had contact with this child, who admitted

1 to committing the physical acts on this child, was
2 Mrs. Lucio.

3 You would ask: Well, maybe the children
4 did it. They stated that at the beginning, that the
5 children were very unruly. That's the evidence she knew.
6 She told you exactly how she struck the child. She told
7 you exactly what she did. It wasn't: Well, maybe she
8 didn't lay a hand on her. No. She readily admits it.
9 And once again, all of the injuries, all of the beatings
10 and all of the bruising and the physical assault that you
11 see are going to cause the brain damage.

12 And the doctor testified that a child's
13 head is too large for its body at that age. So it's
14 susceptible to brain injuries from being shaken, or being
15 hit, because their neck muscles aren't strong enough to
16 support the head.

17 Also, because the cranial area inside the
18 head is susceptible to bruising because the gray matter of
19 the brain is not sufficiently set at that younger age. So
20 children are susceptible to brain injuries as a result of
21 being struck.

22 MR. GILMAN: Objection, Judge. This is not
23 in evidence, and now counsel is a doctor?

24 THE COURT: Stay within the evidence.

25 MR. PADILLA: Ladies and gentlemen, the

1 hair loss. How do you explain that? Mr. Gilman said:
2 Well, it's a lack of nutrition. The doctor testified it
3 is also consistent with the hair being pulled out, or
4 being yanked out. When a child's hair is being yanked and
5 pulled to a point where she loses hair, don't you believe
6 that that is going to cause the brain inside the head to
7 be rattled, and be subjected to bruising? That's
8 consistent. It's not consistent with malnutrition at this
9 point. Then, again, you only have the other massive 110
10 bruises, the broken arm, the bruised lungs, the bruised
11 kidneys and the bruised spine for it. But you can take it
12 all into consideration.

13 When you take all the evidence together,
14 ladies and gentlemen, it is a clear case of child abuse.
15 Child abuse to the point that it causes the death of this
16 child. That's what the evidence shows. You may argue
17 this minor point, or that minor point. No, ladies and
18 gentlemen, the evidence is clear beyond a reasonable doubt
19 that this defendant caused the death of this child by
20 striking her, hitting her or throwing her against
21 something which is consistent with the evidence.

22 Dr. Farley told you: This child was beaten
23 to death. She's a pathologist, a trained pathologist.
24 She has been a trained pathologist for 20 years. And what
25 does she tell you? This is the worst case of child abuse

1 I have ever seen.

2 You got Doctor Vargas who has been doing it
3 for 30 years, and the pathologist for 20 years. And they
4 jointly have 50 years of medical practice, and they tell
5 you: This is the worst case of child abuse I've ever
6 seen.

7 What does that lead you to believe? That
8 this child was physically struck across the trunk, across
9 the body and across the head. Why would she not hit her
10 across the head in her fit of anger? We don't know. But
11 why would she not hit across the head? You know what?
12 I'm going to slap her in the ear that causes bruising --
13 according to the doctor. She also has bruising on the ear
14 consistent with pulling on the ear and twisting it, on
15 both sides.

16 Well, what's inside of the head, if not the
17 brain? If you're causing injuries to the ears, to the
18 forehead, and to the brain, and onto the head, what's
19 going to happen? It's going to cause brain injuries.

20 And the thing about it, if you look at the
21 evidence, ladies and gentlemen, and if you look at the
22 exhibits containing the picture of the brain, there's
23 going to be injuries all around the head, and all
24 throughout the head, ladies and gentlemen. You know what,
25 you will take these back. I'll let you take it back

1 there.

2 But this child had injuries all inside of
3 the skull -- bleeding from both sides. As a matter of
4 fact, Dr. Farley testified that when she cut the skull,
5 all the blood just poured out. What does that indicate to
6 you? Massive head injury. And every doctor has told you
7 here that that is consistent with being struck, with being
8 hit across the head.

9 That's not a fall. It's not a fall.
10 Because the evidence clearly does not show a fall. Who
11 here has testified that there was even a fall? She said
12 she was told that that child suffered a fall. You know
13 what? That was prior to her actually finally confessing.
14 That was the exception.

15 Afterwards, she said: You know what? I
16 hit this child -- when she demonstrated: I hit the child.
17 And if you recall what Ranger Escalon said: He said: I
18 came in and I knew at that time she was really guilty, or
19 that she was pretty beaten by this time. She never --
20 when she comes clean and admits to committing those
21 acts -- never talks about the fall ever again. It was
22 over here at the beginning when she was denying all
23 liability. But after she confessed, she said: This is
24 what I did. These are the injuries that I caused. Yes, I
25 did everything. She never, again, mentions the fall. The

1 only thing she says: Well, you know what? Yeah, I caused
2 these injuries. But, hold it, hold it! I know that this
3 child fell because I was told she fell. She wasn't with
4 her. She didn't see the fall.

5 The defense would make the statement:
6 Well, you know what? Maybe they didn't know from what
7 steps she fell? From what stairs did she fall? And
8 that's the only thing you've heard, according to her,.
9 But how credible is she? How credible is she, ladies and
10 gentlemen? And how reliable is she?

11 She did the act. She did the head
12 injuries. She tried to minimize her involvement. You
13 know what? It's unfortunate, it's unfortunate. But we've
14 got to speak for this child because this child deserves
15 justice. Nothing can bring her back. But you know there
16 is no reason for a child -- even an adult -- to suffer the
17 type of injury, the type of humiliation as a human being
18 that this child suffered.

19 And I don't want you to go out there and
20 find this person guilty based on the fact, you know, that
21 somehow I've influenced you or you're angry with the
22 defendant. Don't do it for that reason. Don't do it for
23 that reason. You go in there because the evidence clearly
24 shows that she committed those acts, which, unfortunately,
25 caused the death of this child, and she let that child sit

1 there knowing the child was injured and did nothing about
2 it.

3 But you know what? Look at her statement.
4 If you go back to her statement, she says: When Robert
5 Alvarez, the father, brings the child out and calls out to
6 her, what does she say? Don't tell me. Don't tell me
7 what? Don't tell me the child is dead, because she knew
8 the child was dead. She knew the child was dead. Don't
9 tell me? At that moment, she knew she had inflicted
10 sufficient injuries to this child that was going to cause
11 this child's death.

12 Because Mr. Alvarez -- in her own
13 statement -- doesn't say: You know what? Come over here.
14 It's not dead. And bring the child down. And he calls
15 her, and the first time she doesn't go over there where
16 the child is. The second time, when he carries the child
17 now, he calls her and her first response is: Don't tell
18 me. Don't tell me what? She knew what she had done. She
19 knew what had happened. She knew the type of injuries she
20 inflicted on that child. And it just got out of hand.
21 She would have preferred to have kept violating this child
22 herself, and kept on biting this child. For what reason?
23 Why?

24 You know what? We don't want have to
25 establish motive. We don't have to show you why the child

1 suffered. All we got to show you is that on February 17,
2 2007, this defendant, Melissa Lucio, caused the death of
3 Mariah Alvarez, a child under the age six, by striking,
4 hitting her or by throwing her and causing the death of
5 this child. You can read the indictment. But the
6 evidence clearly shows it's murder. It's unfortunate.
7 It's sad. And it's also, it questions everybody's --

8 THE COURT: Two minutes, Counselor.

9 MR. PADILLA: Two minutes, Your Honor?

10 THE COURT: Yes, sir.

11 THE WITNESS: Thank you, Your Honor.

12 Ladies and gentlemen, you take with you back the charge
13 that we discussed with you. We told you during jury
14 selection you could take it with you. This is the law
15 that applies, that instructs you that a person acts
16 knowingly or with knowledge, with respect to the result of
17 his conduct when he is aware that the conduct is
18 reasonably certain to cause the result.

19 Ladies and gentlemen, she intentionally and
20 knowingly struck this child. The striking caused the
21 brain hemorrhage. The brain hemorrhaging, causing death.
22 She is guilty of this charge of capital murder. The
23 indictment was proven to you guilt beyond a reasonable
24 doubt. You take it with you in the jury room. Read the
25 entire charge.

1 Also remember the facts. This is where all
2 of us want justice. So we ask that you go back there and
3 look at all of the evidence, look at all of the evidence
4 that was presented to you, and If you want to review
5 anything that was brought to you by the State, if you
6 reach down in your heart of hearts and you decide this
7 case for what it is, because it is as I told you in my
8 opening statement: This is nothing but a cold blooded
9 murder. And you find this defendant guilty of the offense
10 charged, and you send a message out to the public that
11 children are not disposable. That we're not going to
12 allow child abuse in Cameron County. We are not going to
13 allow innocent children to be killed in Cameron County.
14 Because if you do, then you're going to suffer the
15 consequences of that. We are a system of law and the
16 system clearly protects this child. That's why the child
17 is under six. It was proven to you. The law allows you
18 to consider this type of case. Because we have vested
19 interest in protecting our children. They have a vested
20 interest, because they are our future, ladies and
21 gentlemen. And if you abuse and you kill a child like
22 that, it affects us all.

23 This child right now should be getting
24 ready to for kindergarten, should be getting to know about
25 Sponge Bob -- and all that stuff -- but she won't be able

1 to. Why? Because this lady here murdered her, and that's
2 what the evidence shows.

3 I respect you for the time you have
4 invested in this case. I ask that you go back there and
5 render the only verdict which is true in your heart of
6 heart, and in your mind of minds, that this defendant is
7 guilty of the offense charged. Thank you, ladies and
8 gentlemen.

9 THE COURT: Ladies and gentlemen of the
10 jury, at this time all of the evidence is before you, the
11 Court's charge, and including the arguments of counsel are
12 before you. I'm going to hand to the bailiff the Court's
13 charge, along with the verdict form. It'll be left with
14 you in the jury box.

15 Once all of the members of the jury are
16 present and assembled in the jury room, and the case is
17 formally submitted to you, and then you may begin your
18 deliberations. Please step down from the jury box and
19 accompany the bailiff to the jury room.

20 MR. GILMAN: Judge? The alternates?

21 THE COURT: Except -- just a minute,
22 please. Except for Maricela Hernandez and Emma Molina.
23 Will you please stay behind?

24 **(Jury left the courtroom at 11:29 a.m.)**

25 THE COURT: Y'all may be seated

1 .Mrs. Hernandez and Mrs. Molina? I want to thank you for
2 your service as alternate jurors in this cases. We were
3 thinking that, in all probability, we would lose at least
4 one of the other jurors, or maybe two. So your service
5 was extremely important.

6 You're going to be excused from your
7 service as jurors on this case. You're free to go about
8 your business. I would ask that you please not discuss
9 this case with anybody at all until after the -- until
10 after the end of the trial. If there is a guilty verdict
11 and then we go into the punishment stage, that you not
12 discuss this case until after the last bit of the evidence
13 is in, okay? And then you will be free to discuss it with
14 anybody you'd like. Thank you very much. Good luck and
15 God bless.

16 (Alternate Jurors excused at 11:30 a.m.)

17 THE COURT: Court will be in recess --

18 MR. PADILLA: May we approach?

19 THE COURT: Yes, sir. Mr. Gilman --

20 MR. GILMAN: I am trying to get there.

21 **(Discussion off the record at the bench**
22 **with bailiff.)**

23

24 **(Recess from 11:32 a.m. till 11:54 a.m.)**

25 (Jury Notes: 1 & 2)

1 THE COURT: I appreciate. All right. I
2 have received two notes:

3 "Can you please bring us some lunch to eat
4 while deliberating, some coffee and water?"

5 We're in the process of providing that.

6 The other note is:

7 "Please allow us to see the interview of
8 Melissa Lucio of Harlingen PD in its entirety, a copy of
9 the signed Miranda rights, and all photos."

10 Both of these are signed by the presiding
11 juror, Melissa Quintanilla. My sense is to send over all
12 of the evidence. Is there any objection to that?

13 MR. PADILLA: No objections from the State.

14 MR. GILMAN: No, sir.

15 THE COURT: Okay.

16 MR. PADILLA: For the record, we're
17 bringing our player our tech person will provide the
18 player for the DVD, and we'll just deliver it here.

19 THE COURT: And what we'll do, is, we'll
20 just have our bailiff set it up instead of your personnel
21 setting it up.

22 We've got an agreement to provide all the
23 evidence in.

24
25 **(Recess from 11:55 a.m. to 3:53 p.m..)**

1 (Deliberations continue.)

2 THE COURT: All right. Bring Melissa in.
3 All right. She's on her way. Let me make a copy entry.
4 Please be seated. Bring the jury in.

5 (Jury enters.)

6 THE COURT: In Cause Number 07-CR-885-B,
7 State of Texas versus Melissa Elizabeth Lucio, let the
8 record reflect that the defendant is present along with
9 her two attorneys. The State is also present.

10 Ladies and gentlemen of the jury panel, I
11 have received a note that you have reached a verdict.
12 Have you reached a verdict?

13 THE FOREPERSON: Yes, Your Honor.

14 THE COURT: Will you please hand the
15 verdict to the bailiff, please.

16 Madame Foreperson, is this verdict a
17 unanimous verdict of all the jurors?

18 THE FOREPERSON: Yes, Your Honor.

19 THE COURT: In Cause Number, 07-CR-885-B,
20 State of Texas versus Melissa Elizabeth Lucio:

21 We, the jury find the defendant Melissa
22 Elizabeth Lucio guilty of the offense of capital murder as
23 alleged in the indictment."

24 Ladies and gentlemen of the jury, we now
25 proceed to the punishment stage. I'm going to -- given

1 that it's almost 4:00 today, I am going to start the
2 punishment stage of this case tomorrow morning at
3 9:00 o'clock. I don't anticipate that it's going to be
4 very long in terms of evidence. So I'm going to excuse
5 you for this evening.

6 Again, I remind you that you are not talk
7 to anybody about this case. Don't let anybody talk to you
8 about the case. Do not let anybody discuss this case in
9 front of you. Don't listen to any television reporting,
10 radio news or any newspaper reports at all of this case.
11 Tomorrow morning we will start at 9:00 o'clock in the
12 morning. Do not even discuss this case with your loved
13 ones or anyone else, please. Tomorrow morning, I will see
14 you at 9:00 in the morning.

15 MR. PADILLA: May I approach the bench,
16 Your Honor?

17 THE COURT: Yes.

18 **(Discussion on the record at the bench.)**

19 MR. PADILLA: There is a form, I think, the
20 defendant, the State and defense counsel needs to sign in
21 order to release the jury and not cause them to be
22 sequestered. There's a specific that needs to be filed.

23 THE COURT: I haven't seen that.

24 MR. PADILLA: Raul probably has one on his
25 machine.

1 THE COURT: Well, I looked at the rule, the
2 ruled very specifically said: Upon motion of the jury --
3 I mean -- upon motion of one of the parties, or upon
4 motion of its own, the Court, the jury may be sequestered.

5 MR. PADILLA: That's fine.

6 THE COURT: Nobody has requested the
7 sequester.

8 MR. PADILLA: That's fine.

9 THE COURT: I'm not ordering it. This is a
10 good jury. They're going to follow the instructions, I'm
11 convinced.

12 MR. PADILLA: Fine, Your Honor. Thank you.

13 MR. GILMAN: Judge?

14 THE COURT: Yes, sir.

15 MR. GILMAN: Just in an abundance of
16 caution, may I suggest that you poll the jury?

17 THE COURT: Yeah. If you wish to poll the
18 jury.

19 MR. GILMAN: Yeah.

20 **(End of bench conference.)**

21 THE COURT: A request has been made by
22 defense counsel that the jury be polled. So I'm going to
23 ask each and every one of you whether or not this is your
24 verdict.

25 Mr. Herminio Cruz, is this your verdict?

1 I'm sorry.

2 A JUROR: Yes, sir.

3 THE COURT: You may sit down. Mrs. Irma
4 Contreras Navarro? Madame, is that your verdict?

5 A JUROR: Yes, sir.

6 THE COURT: Mr. Fernando Perez, is that
7 your verdict?

8 A JUROR: Yes, sir.

9 THE COURT: Mr. Johnny Galvan, Jr.

10 A JUROR: Yes, sir.

11 THE COURT: Is that your verdict?

12 A JUROR: Yes, sir.

13 THE COURT: Mr. Alejandro Angel Saldivar?
14 Is that your verdict, sir?

15 A JUROR: Yes, sir.

16 THE COURT: Mrs. Melissa M. Quintanilla, is
17 that your verdict, madame?

18 A JUROR: Yes, sir.

19 THE COURT: Mrs. Ernestina Espinoza? Is
20 that your verdict, madame?

21 A JUROR: Yes, sir.

22 THE COURT: Mrs. Rosanna De Leon? Is that
23 your verdict?

24 A JUROR: Yes, sir.

25 THE COURT: Yes? Mr. Rolando Gonzalez? Is

1 that you verdict, sir?

2 A JUROR: Yes, sir.

3 THE COURT: Mrs. Constance Poland? Is that
4 your verdict?

5 A JUROR: Yes, sir.

6 THE COURT: Mrs. Gloria Garcia? Is that
7 your verdict?

8 A JUROR: Yes, sir.

9 THE COURT: Mr. Ramiro Vargas, Jr? Is that
10 your verdict, sir?

11 A JUROR: Yes, sir.

12 THE COURT: Again, I remind you of the
13 instructions. You are not to discuss this case with
14 anybody at all. And tomorrow, we start promptly at
15 9:00 o'clock with the punishment phase of this case.
16 Until then, you are excused from today. See you tomorrow
17 morning at 9:00 o'clock.

18 (Jury exits at 4:02 p.m.)

19 THE COURT: You may be seated. Thank you
20 very much. That's it. See you tomorrow. Well, let me
21 see, Mr. Gilman and Mr. Padilla. Can I see you in the
22 back, please?

23 (Proceedings adjourned.)

24

25

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

3 CERTIFICATE OF COURT REPORTER

4 I, ADELAIDO FLORES, JR, Official Court Reporter in
5 and for the 138th Judicial District Court of Cameron
6 County, State of Texas, do hereby certify that the above
7 and foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-entitled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND on this the 12th day of
17 August, 2008.



18
19 ADELAIDO FLORES, JR., Texas CSR
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